SUPREME COURT OF THE UNITED STATES

No. 545.—October Term, 1965.

Joseph E. Seagram & Sons, Inc., et al., Appellants, *v.* Donald S. Hostetter, etc., et al. } On Appeal From the Court of Appeals of New York.

[April 19, 1966.]

Mr. Justice Stewart delivered the opinion of the Court.

This appeal draws in question certain provisions of Chapter 531, 1964 Session Laws of New York, which worked substantial changes in the State's Alcoholic Beverage Control Law. The appellants are distillers, wholesalers, or importers of distilled spirits, who commenced this action in a New York court for an injunction and declaratory judgment against the appropriate state officials, upon the ground that § 9 of Chapter 531 violates the Federal Constitution in several respects.[1] The trial court upheld the constitutionality of the law,[2] and its judgment was affirmed by the Appellate Division [3] and by the New York Court of Appeals.[4] The appellants brought the case here,[5] and we now affirm the judgment of the Court of Appeals.

Chapter 531 was enacted as the result of a sweeping redirection of New York's policy regulating the sale of

[1] The appellants also challenged two minor provisions of § 7 of Chapter 531, 1964 Session Laws of New York. See pp. 14–15, *infra*. The relevant provisions of §§ 7, 8 and 9 of Chapter 531 are set out in the Appendix to this opinion.

[2] 45 Misc. 2d 956, 258 N. Y. S. 2d 442.

[3] 23 App. Div. 2d 933, 259 N. Y. S. 2d 644.

[4] 16 N. Y. 2d 47, 209 N. E. 2d 85, 262 N. Y. S. 2d 453.

[5] 382 U. S. 924.

liquor in the State. For more than 20 years the Alcoholic Beverage Control Law (hereinafter ABC Law) had required brand owners of alcoholic beverages or their agents to file with the State Liquor Authority monthly schedules listing the bottle and case price to be charged to wholesalers and retailers within the State. These schedules were publicly displayed, and sales were prohibited except at the listed prices.[6] In 1950 the ABC Law was amended by the addition of a section which required brand owners or their agents to file price schedules listing the minimum retail price at which each brand could be sold to consumers and which prohibited retail sales at prices less than those fixed in the schedules.[7] The enforcement of these mandatory minimum retail prices was entrusted to the State Liquor Authority rather than to private action, but the Authority was given no power to determine the reasonableness of the prices that were fixed.

In 1963, against a background of irregularities within the State Liquor Authority and extensive dissatisfaction with the operation of the ABC Law, the Governor of New York appointed a Commission to study the sale and distribution of alcoholic beverages within the State. The Commission sponsored various study papers and issued a series of reports and recommendations.[8] It found unequivocally that compulsory resale price maintenance had had "no significant effect upon the consumption of

[6] Laws 1942, c. 899, § 1, as amended, Alcoholic Beverage Control Law, §§ 101–b–3 (a)–(d) (1963 ed.).

[7] Laws 1950, c. 689, § 1, Alcoholic Beverage Control Law, § 101–c (1963 ed.).

[8] See New York State Legislative Annual 401–408, 484–489, 498–500 (1964); Breuer, Moreland Act Investigations in New York: 1907–65, pp. 131–169 (1965). The Commission's Study Paper Number 5 ("Resale Price Maintenance in the Liquor Industry") and Report and Recommendations No. 3 ("Mandatory Resale Price Maintenance") are part of the record in this case.

alcoholic beverages, upon temperance, or upon the incidence of social problems related to alcohol." It also found that New York liquor consumers had been the victims of serious discrimination because of the higher prices and reduced competition fostered by the mandatory minimum price maintenance provision of the law.[9] The Commission therefore recommended the repeal of that provision,[10] and the ultimate response of the legislature was the enactment of Chapter 531.

The legislature did not stop, however, with repeal of the mandatory resale price maintenance provision of the law.[11] In § 9 of Chapter 531 it imposed the additional requirement that the monthly price schedules for sales to wholesalers and retailers filed with the State Liquor Authority must be accompanied by an affirmation that "the bottle and case price of liquor . . . is no higher than the lowest price" at which sales were made anywhere in the United States during the preceding month. It is this provision that is the principal object of the appellants' constitutional attack in this litigation.

Section 9 effects the "no higher than the lowest price" requirement by the addition of paragraphs (d)–(k) to § 101–b–3 of the ABC Law. The affirmation required by paragraph (d), which must be filed and verified by brand owners or their agents who sell to wholesalers in New York, must cover all sales to wholesalers anywhere

[9] Based upon the comparative price data it assembled, including examples of wholesale liquor prices in New York higher than retail prices elsewhere, the Commission concluded that, because of the mandatory resale price maintenance provision, New Yorkers were subsidizing the liquor industry by $150,000,000 a year.

[10] The Commission made various other recommendations, including relaxation of certain restrictions on package store licenses and elimination of some of the conditions imposed on establishments serving liquor by the drink.

[11] The mandatory resale price maintenance provision, § 101–c, was repealed by § 11 of Chapter 531.

in the United States by the brand owner, his agent, or any "related person." The less extensive affirmation required by paragraph (e), which applies to persons other than brand owners or their agents who file schedules for sales to wholesalers, need only cover sales elsewhere by the person filing the schedule. The affirmation required by paragraph (f), which must be filed by brand owners, their agents, or "related persons" who sell to retailers in New York, must be verified by the brand owner or his agent and must cover all sales to retailers anywhere in the United States by the brand owner, his agent, or any "related person." The less extensive affirmation required by paragraph (g), which applies to wholesalers who are not "related persons," need only cover sales elsewhere by the person filing the schedule.[12]

The term "related person" is defined in paragraphs (d) and (f) to include any person, the "exclusive, principal or substantial business of which is the sale of a brand or brands of liquor purchased from" the brand owner or his agent. In consequence, before a "related person" wholesaler may sell a particular brand of liquor to a New York retailer, he must secure an affirmation from the brand owner or his agent that the price charged by the wholesaler is no higher than the lowest price at which the brand was sold to any retailer in any other part of the country by any wholesaler doing "substantial" business with the brand owner. Thus, a brand owner doing business in New York must keep himself informed of the prices charged by all "related persons" throughout the United States.

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[12] Sellers seeking to take advantage of the milder affirmations required by paragraphs (e) and (g) must file a representation that they are not "related persons." See Alcoholic Beverage Control Law, Appendix, Rule 16 of the State Liquor Authority, § 65.7 (e), 9 NYCRR 65.7 (e). The schedule requirements of § 101–b do not apply to sales of private label brands of liquor. Alcoholic Beverage Control Law, § 101–b–3 (c).

The scheme of § 9 of Chapter 531 is rounded out by the addition to § 101–b–3 of the ABC Law of paragraph (h), which prohibits sales to wholesalers and retailers of brands for which no affirmation has been filed; paragraph (i), which requires the "lowest price" to reflect all discounts and other allowances to wholesalers and retailers, with the exception of state taxes and delivery costs; and paragraphs (j) and (k), which impose criminal penalties for the filing of a false affirmation.

As a result of a series of stays granted throughout this litigation, the provisions of § 9 have not yet been put into effect. Our concern here, therefore, is only with the constitutionality of those provisions on their face. The appellants attack § 9 on many constitutional fronts. They contend that its provisions place an illegal burden upon interstate commerce, conflict with federal antitrust legislation and thus fall under the Supremacy Clause, and violate both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. We find all these contentions without merit.

Consideration of any state law regulating intoxicating beverages must begin with the Twenty-first Amendment, the second section of which provides that: "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." As this Court has consistently held, "That Amendment bestowed upon the states broad regulatory power over the liquor traffic within their territories." *United States* v. *Frankfort Distilleries*, 324 U. S. 293, 299. Cf. *Nippert* v. *Richmond*, 327 U. S. 416, 425, n. 15. Just two Terms ago we took occasion to reiterate that "a State is totally unconfined by traditional Commerce Clause limitations when it restricts the importation of intoxicants destined for use, distribution, or consumption within its borders." *Hostetter* v. *Idlewild*

Liquor Corp., 377 U. S. 324, 330. See *State Board of Equalization* v. *Young's Market Co.*, 299 U. S. 59; *Mahoney* v. *Joseph Triner Corp.*, 304 U. S. 401; *Ziffrin, Inc.* v. *Reeves*, 308 U. S. 132; *California* v. *Washington*, 358 U. S. 64. Cf. *Indianapolis Brewing Co.* v. *Liquor Comm'n*, 305 U. S. 391; *Joseph Finch & Co.* v. *McKittrick*, 305 U. S. 395. As the *Idlewild* case made clear, however, the second section of the Twenty-first Amendment has not operated totally to repeal the Commerce Clause in the area of the regulation of traffic in liquor. In *Idlewild* the delivery and use of the liquor was in a foreign country, and the Court held that under those circumstances New York could not forbid sales made under the explicit supervision of the United States Customs Bureau, pursuant to laws enacted by Congress under the Commerce Clause for the regulation of commerce with foreign nations. Cf. *Dept. of Alcoholic Beverage Control* v. *Ammex Warehouse Co.*, 378 U. S. 124; *Collins* v. *Yosemite Park Co.*, 304 U. S. 518.

Unlike *Idlewild*, the present case concerns liquor destined for use, distribution, or consumption in the State of New York. In that situation, the Twenty-first Amendment demands wide latitude for regulation by the State. We need not now decide whether the mode of liquor regulation chosen by a State in such circumstances could ever constitute so grave an interference with a company's operations elsewhere as to make the regulation invalid under the Commerce Clause.[13] See *Baldwin* v. *G. A. F. Seelig*, 294 U. S. 511. No such situation is presented in this case. The mere fact that § 9 is geared to

[13] Cf. *United States* v. *Frankfort Distilleries*, 324 U. S. 293, 299, where we stated that the Twenty-first Amendment "has not given the states plenary and exclusive power to regulate the conduct of persons doing an interstate liquor business outside their boundaries." See also Note, The Twenty-first Amendment Versus the Interstate Commerce Clause, 55 Yale L. J. 815 (1946).

appellants' pricing policies in other States is not sufficient to invalidate the statute. As part of its regulatory scheme for the sale of liquor, New York may constitutionally insist that liquor prices to domestic wholesalers and retailers be as low as prices offered elsewhere in the country. The serious discriminatory effects of § 9 alleged by appellants on their business outside New York are largely matters of conjecture. It is by no means clear, for instance, that § 9 must inevitably produce higher prices in other States, as claimed by appellants, rather than the lower prices sought for New York. It will be time enough to assess the alleged extraterritorial effects of § 9 when a case arises that clearly presents them. "The mere fact that state action may have repercussions beyond state lines is of no judicial significance so long as the action is not within that domain which the Constitution forbids." *Osborn* v. *Ozlin*, 310 U. S. 53, 62. Cf. *Hoopeston Canning Co.* v. *Cullen*, 318 U. S. 313; *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177, 189; *Baldwin* v. *G. A. F. Seelig*, 294 U. S. 511, 528.

Moreover, as the Court of Appeals observed, the regulatory procedure followed by New York is comparable to that practiced by those States, 17 in number, in which liquor is sold by the State itself and not by private enterprise. Each of these monopoly States, we are told, requires distillers to warrant that the price charged the State is no higher than the price charged in other States. In at least one of these States, the distillers are required to exclude from the sales price all rebates and other allowances made to purchasers elsewhere, and the State has taken positive precautions to insure that the contractual commitments are fulfilled.[14] In some respects, the bur-

[14] The executive vice-president of one of the appellants testified that "We and other distillers have freely entered into contracts with these monopoly states in which we warrant that the f. o. b.